

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Annie G. Denmark,)	Docket No. 12-0450
)	
n/k/a Annie G. Walton,)	
)	
Petitioner)	Decision and Order

Appearances:

none, by Annie G. Denmark, full name Annie Gail Denmark Walton, the Petitioner; and

Giovanna Leopardi, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held as scheduled on August 14, 2012. Annie G. Denmark, full name Annie Gail Denmark Walton (Petitioner Walton) did not participate. (Petitioner Walton did not participate by telephone: she did not answer at the “alternate” telephone number she had provided in May 2012 with her Hearing Request, and voice mail had not been set up, so no message could be left. Further, in response to my instructions in the Hearing Notice filed June 27, 2012, Petitioner Walton provided no telephone number where she could be reached for the hearing by telephone.)

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Admitted into evidence are Giovanna Leopardi’s testimony and USDA Rural Development’s Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List, which were filed on June 22, 2012.

4. Petitioner Walton owes to USDA Rural Development **\$5,090.09** (as of June 20, 2012, *see esp.* RX 5, pp. 1, 2), in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1991, for a home in Georgia. The balance is now unsecured (“the debt”).

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$5,090.09**, would increase the balance by \$1,425.23 to \$6,515.32. *See esp.* RX 5, p. 2.

7. The amount Petitioner Walton borrowed in 1991 was \$40,000.00. RX 1. Foreclosure was begun in 2004. A Chapter 13 Bankruptcy was dismissed on January 3, 2005. A short sale took place in February 2005, for \$24,000.00 (RX 3, pp. 7 and 9). By the time the sale proceeds (\$24,000.00) were applied to reduce the balance, the USDA Rural Development debt had grown to \$41,386.09 (RX 4):

\$ 35,415.65	Principal
\$ 4,822.32	Interest
\$ 1,061.29	Recoverable Costs
<u>\$ 86.83</u>	Interest on Recoverable Costs
\$ 41,386.09	Amount Due when sale funds were applied on the loan
=====	

RX 4, and USDA Rural Development Narrative.

The sale proceeds of \$24,000.00 were applied to the Amount Due. Interest stopped accruing when the sale funds were applied on the loan. An additional foreclosure fee of \$175.00 was added to the balance, resulting in \$17,561.09 being due. Collections from Treasury (through *offsets* of Petitioner Walton’s income tax refunds that were intercepted and applied to the debt, and her stimulus money (*see* RX 5, p. 1), reduced the debt from \$17,561.09 to **\$5,090.09** unpaid as of June 20, 2012 (excluding the potential remaining collection fees). *See* RX 5 and USDA Rural Development Narrative.

8. Petitioner Walton still owes the balance of **\$5,090.09** (as of June 20, 2012, excluding the potential remaining collection fees), and USDA Rural Development may collect that amount from her. The issue is whether she should be garnished. Petitioner Walton failed to file a Consumer Debtor Financial Statement, or anything, in response to my instructions in the Hearing Notice [filed June 27, 2012]. Thus I cannot calculate Petitioner Walton’s current disposable pay. (Disposable pay is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.)

9. There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot determine whether garnishment to repay “the debt” (*see* paragraph 4) in the amount of 15% of Petitioner Walton’s disposable pay would create financial hardship. What I can determine is that Petitioner Walton is doing an excellent job of getting the debt repaid through *offsets* of her income tax refunds, and she pays a smaller amount toward collection fees through *offsets*, than she will if she makes payments, so I encourage Petitioner Walton to continue to repay the debt in the way she has been doing. RX 5, p. 1.

Discussion

10. Petitioner Walton, if you wish to contact Treasury’s collection agency to negotiate a compromise of the debt, you may telephone Treasury’s collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Walton, you may choose to offer to pay through solely *offset* of **income tax refunds**, perhaps with a specified amount for a specified number of years. Petitioner Walton, you may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less. Petitioner Walton, you may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

11. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Walton and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

12. Petitioner Walton owes the debt described in paragraphs 4 through 8.

13. **Garnishment is not authorized through September 2015.** Beginning October 2015, potential garnishment to repay the debt **up to 15%** of Petitioner Walton’s disposable pay is authorized. 31 C.F.R. § 285.11.

14. **No refund** to Petitioner Walton of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

15. Repayment of the debt may occur through *offset* of Petitioner Walton’s **income tax refunds** or other **Federal monies** payable to the order of Ms. Walton.

Order

16. Until the debt is repaid, Petitioner Walton shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in her mailing address;

delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

17. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment in any amount **through September 2015**. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 15%** of Petitioner Walton's disposable pay beginning **October 2015**. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 14th day of August 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Giovanna Leopardi, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703

giovanna.leopardi@stl.usda.gov

314-457-5767 phone
314-457-4547 FAX

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776